

BOARD OF MAYOR AND ALDERMEN
July 13, 2009

A regular meeting of the Board of Mayor and Aldermen was held on July 13, 2009 at 6:00 p.m. in the Council Chambers of the Municipal Center.

Mayor Sharon Goldsworthy was present and presiding.

The following Aldermen were present: Mark Billingsley, Ernest Chism, John Drinnon, Carole Hinely, and Mike Palazzolo. Staff present: Patrick Lawton, Andy Pouncey, George Brogdon, Kristen Geiger, Tom Cates, Pam Beasley, Jerry Cook, Chief Richard Hall, Pat McConnell, Bo Mills, Ralph Gabb, Lisa Piefer, Joe Nunes, and Dotty Johnson.

Invocation

Assistant City Administrator Andy Pouncey gave the invocation.

Pledge of Allegiance

Alderman Ernest Chism led the Pledge.

Approval of Agenda

Motion by Mr. Drinnon, seconded by Ms. Hinely, to accept the agenda as printed.

Alderman Billingsley asked to include on the agenda the memo received from City Administrator Patrick Lawton and the adoption of the Parks Master Plan regarding the naming of the park.

Mr. Drinnon and Ms. Hinely accepted the change in the agenda.

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–yes, Hinely–yes, Palazzolo–yes. Motion approved.

Approval of Minutes

Alderman Palazzolo noted on page 7 under Consent Agenda, Printing of FYI Newsletter in the second sentence the word should be *three* instead of *tree*.

Mayor Goldsworthy noted on the first page under Approval of Minutes, second paragraph first sentence the word *differ* should be *defer*.

Motion by Mr. Palazzolo, seconded by Mr. Chism, to approve the minutes of the Board of Mayor and Aldermen meeting held June 22, 2009 as amended.

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–yes, Hinely–yes, Palazzolo–yes. Motion approved.

Citizens to be Heard

Brent Davis, Executive Director of Germantown Community Theatre, 3037 Forest Hill Irene introduced himself as the new director of the Theatre. He invited the citizens of Germantown to come to the Theatre and thanked the Board for their support.

Jerry Gee, 3045 Oakleigh Manor Cove, chairman of the Parks and Recreation Commission, stated that the agenda item banning guns in the parks had been before the Commission on two occasions and at both meetings the vote was 8 – 0 to recommend to ban the guns in the parks.

Chuck Bates, 2821 Honey Tree Dr. stated that he had a permit to carry a gun and had protected his family on two different occasions. He asked the Board to allow him and other law abiding citizens to carry guns. Stuart Cadleu, 3045 Honey Tree stated he did not have a permit to carry a gun but he did not have a problem with people who have a permit to carry a gun. He asked the Board to not restrict the citizens to protect themselves.

Mayor Goldsworthy asked for clarification.

City Administrator Patrick Lawton stated there was an item on the agenda in regards to prohibiting guns in public buildings including City Hall. If the Board passes this agenda item, no one will be allowed to bring guns into City Hall.

Mary Ann Gibson, 8688 Pepper Bush Lane, thanked the Board for their leadership on the opt-out position the Board will hopefully take. She stated she was a member of the Parks and Recreation Commission and she did not believe guns had a place where our family and children play.

B.V. Hughes, 2593 Cedarville Dr. felt the parks were a good working environment for criminals and he felt that people who have permits to carry guns should be allowed to do so.

Adrienne Pakis-Gillon, 2111 Prestwick Dr. stated she supported the resolution to opt-out of the guns in the parks. She felt that allowing guns into events like the Germantown Festival or the Germantown Horse Show would decrease the ambience of a peaceful family-oriented community. She asked the Board to vote for the resolution to keep guns out of the parks and places and keep the people safe.

Alan Eisenberg, 2250 W. Glenalden Dr. cited the reasons the government made this a law and felt the City should abide by the federal and state legislation.

Mayor Goldsworthy adjourned the regular Board of Mayor and Aldermen meeting and convened the Beer Board.

BEER BOARD

PUBLIC HEARING – Beer Permit Application – Hyatt Place Germantown Hotel – 9161 Winchester Rd.

Mr. Lawton stated this was a permit for on-premise consumption of beer. The background checks had been completed and the application was in compliance with the City's ordinance.

Mayor Goldsworthy opened the public hearing. Having no one come forward, the public hearing was concluded.

Motion by Ms. Hinely, seconded by Mr. Palazzolo, to approve the request from Larry D. Silver and Earle F. Jones for a permit to sell beer for on-premise consumption at the Hyatt Place Germantown Hotel at 9161 Winchester Rd

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–yes, Hinely–yes, Palazzolo–yes. Motion approved.

Mayor Goldsworthy adjourned the Beer Board and reconvened the Board of Mayor and Aldermen meeting.

BOARD OF MAYOR AND ALDERMEN

PUBLIC HEARING – Ordinance 2009-5 – Real and Personalty Property Taxes – Third and Final Reading

Finance Director Ralph Gabb stated the recommended property tax rate on third and final reading for the FY10 budget is \$1.425 per \$100.00 of Assessed Valuation. The City's certified tax rate for the last four year's had been \$1.54 per \$100.00 of Assessed Value. However, the Shelby County Assessor completed a 2009 countywide reappraisal of property. As a result the municipalities were required to calculate the certified tax rate or roll back rate that would produce a "tax neutral" effect for the current taxpayers.

The State Board of Equalization concurs with the City's calculation of the certified tax rate of \$1.425. This certified tax rate does not have a tax increase but is "tax neutral" for current taxpayers.

Mayor Goldsworthy opened the public hearing. Having no one come forward the public hearing was concluded.

Motion by Mr. Drinnon, seconded by Mr. Chism, to approve Ordinance 2009-5 on third reading and public hearing of a certified tax rate of \$1.425.

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–yes, Hinely–yes, Palazzolo–yes. Motion approved.

Mayor Goldsworthy commended staff for their hard work and diligence on the certified tax rate and working with the State.

Resolution 09R11 –Prohibition of handguns while within or on a public park, natural area, historic park, greenway, waterway or other similar public place owned and operated by the City of Germantown.

Assistant City Administrator George Brogdon stated this resolution would prohibit handguns while within or on a public park, natural area, historic park, greenway, waterway or other similar public place owned and operated by the City of Germantown.

In recent State legislation, the Senate and House enacted Public Chapter 428 amending Tennessee Code Annotated §39-17-1311 to allow persons, who are authorized to carry handguns pursuant to Tennessee Code Annotated §39-17-1351, to possess a handgun while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by the state, a county, a municipality or instrumentality thereof.

Many of our elected officials had worked with legislators to ensure that Public Chapter #428 allowed an opt-out clause for local governments. Public Chapter #428 does provide that any municipality or county may prohibit, by resolution adopted by a majority vote of its legislative body, persons authorized to carry a handgun pursuant to Tennessee Code Annotated §39-17-1351, from possessing such handgun while within or on a public park that is owned or operated by a municipality or instrumentality thereof.

Approval of this resolution would prohibit handguns in public parks.

In response to a question from Alderman Hinely regarding an incident that happened recently in Germantown, Police Chief Hall stated it was currently under investigation and he would not go into detail.

Chief Hall responded to a question from Alderman Palazzolo about break-ins around the greenway and parks. Chief Hall stated as the Chief of Police and looking at Germantown's particular park situation where most of the parks are concentrated in the neighborhoods and in and around sporting events, his concern was having weapons in and around children. He stated that some sporting events get heated and having a weapon that close concerned him. He stated that he did not recall ever having had any gun violence in the parks or greenway.

In response to a question from Alderman Chism, Mr. Lawton stated that the County Attorney's opinion was just one opinion regarding the constitutionality of the recently passed statute.

City Attorney Tom Cates stated he felt it was constitutional but it was one lawyer's opinion and Brian Kuhn and his associate were two lawyers but the ones that will have to decide this will be the Tennessee

Supreme Court. If someone is charged with carrying a gun in a park then we will go to court and if necessary, appeal it all the way to the Tennessee Supreme Court and we will have a final answer.

Alderman Billingsley had asked Chief Hall to furnish him a list of the crimes committed between January 2008 and June of 2009 in all the parks and after going through all the descriptions of violations what he saw were liquor law violations, curfew, loitering, vandalism, and theft from motor vehicles.

Chief Hall stated he had been with Germantown for 24 years and these crimes were reflective of the average year. Most of the crimes were not felonies or violent felonies.

Alderman Billingsley went on to question Chief Hall about the way law enforcement handles different situations and one of the comments Chief Hall made regarded what happens when officers show up when multiple parties have guns and the situations escalates.

Aldermen Hinely stated she had worked very hard with Curry Todd on the amendment to the bill so that the City could opt-out mainly because of the schools but also because most of the parks are adjacent to our schools and that is why she would be voting for the resolution.

Alderman Drinnon stated he supported the permit to carry a gun but agreed with Alderman Hinely that this was not in the best interest of the City to allow guns in parks.

Alderman Palazzolo stated he appreciated the citizens that had come out to speak either pro or con on the issue. The City had given a considerable amount of thought and work on this issue. He stated he would vote for the resolution for the reasons Alderman Hinely had stated and for what he thought was the majority of citizens.

Alderman Billingsley stated he did not take this vote lightly and it was not an easy decision but he stated as a former volunteer police officer, a licensed handgun permit owner, and an actual victim of crime involving weapons, he understood the need for a licensed handgun carrying person to be armed. He stated he was also the liaison to the Parks and Recreation Commission and they had spoken loudly against guns in the parks. He felt both sides were correct but he had to make a decision and he felt the right thing to do was to support the resolution.

Motion by Mr. Palazzolo, seconded by Mr. Billingsley, to approve Resolution 09R11 – Prohibition of handguns while within or on a public park, natural area, historic park, greenway, waterway or other similar public place owned and operated by the City of Germantown.

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–yes, Hinely–yes, Palazzolo–yes. Motion approved.

Alderman Palazzolo asked that as the City looked to producing the appropriate signage to display in the parks and in the spirit of cooperation with the schools that staff should get in touch with the Shelby County School Board and maybe there could be signs in close proximity to the schools so that both could share a post for signage. It is something for staff to look at.

Alderman Chism stated that the signs already exist on Shelby County Schools throughout the county and are already posted.

Municipal Weapons Prohibition – TCA Code §39-17-1359.

Mr. Brogdon explained that as staff was studying the resolution, the legal staff found there was an existing code on the books that if the City chose to, the City could prohibit the possession of weapons, including handguns and other weapons authorized by permits, by posted notice, on property owned or

operated by the City. This action would prohibit the possession of weapons at each property location owned and operated by the City that had been posted.

Motion by Mr. Palazzolo, seconded by Mr. Billingsley. Pursuant to Tennessee Code Annotated §39-17-1359, the City prohibits weapons on or within property owned or operated by the City, including handguns and other weapons authorized by permits. The City is authorized and directed to post plainly visible signs in prominent and other appropriate locations of the property containing language similar to the following:

PURSUANT TO TENNESSEE CODE ANNOTATED §39-17-1359, THE OWNER/OPERATOR OF THIS PROPERTY HAS BANNED WEAPONS ON THIS PROPERTY, OR WITHIN THIS BUILDING OR THIS PORTION OF THIS BUILDING. FAILURE TO COMPLY WITH THIS PROHIBITION IS PUNISHABLE AS A CRIMINAL ACT UNDER STATE LAW AND MAY SUBJECT THE VIOLATOR TO A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS (\$500).

Alderman Palazzolo brought to mind the event in Kirkwood, Missouri where there was gunplay at a council meeting, and this will hopefully keep this from happening here.

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–no, Hinely–no, Palazzolo–yes. Motion approved.

Alderman Billingsley left the podium.

Storm Debris Removal Payment

Neighborhood Services Manager Joe Nunes explained this payment was associated with the removal of tree debris resulting from the storm event on June 12, 2009. There is a \$20,000.00 budget adjustment from the contingency general fund into the collection line of the sanitation fund. It was estimated that between 11,000 and 12,000 cubic yards of tree debris related to the storm was collected by the City's contractor. The total cost associated with this collection of debris was estimated at \$14,810.00. Governor Bredeson had submitted a request to the federal government that Shelby County and surrounding counties be declared federal disaster areas. If that is approved, then Germantown can apply for reimbursement of up to 75% of the eligible costs associated with the storm. Any reimbursement received will go back into the general fund.

Alderman Billingsley returned to the podium.

Assistant City Administrator Kristen Geiger explained to Alderman Palazzolo why the money was being taken from the contingency fund and if reimbursed she stated it will go back to the general fund. This is associated with FY09 not FY10.

In response to a question from Alderman Hinely, Mr. Nunes stated the cleanup was finished as of June 3, 2009.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to authorize the payment up to but not to exceed \$20,000.00 to Michael's Tree & Loader Service for the cost of storm debris removal and approve Budget Adjustment 09-209.

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–yes, Hinely–yes, Palazzolo–yes. Motion approved.

Education Commission – 2009-2010 Appointments

Mr. Lawton stated there were eleven citizens who had applied to volunteer to work on the Education Commission. These commission appointments are made to coincide with the school year so that

members of the commission can work with representatives of the various schools throughout the school year.

Alderman Palazzolo recused himself from this agenda item because he had a family member who is a current commissioner and had reapplied. Alderman Palazzolo left the podium.

Alderman Hinely stated as liaison to the Education Commission she approved the appointments.

Motion by Ms. Hinely, seconded by Mr. Drinnon, to approve the appointments of Abigail Braddock, David Compton, Lesley Fluke, Bonnie Lee, Rodolfo Palazzolo, Eleanor Purdy, Robyn Rudisill, Stephanie VanArsdale, Melissa Walker, Vicki Gandee and Carol Wingfield to the Education Commission.

ROLL CALL: Billingsley–abstain, Chism–yes, Drinnon–yes, Hinely–yes. Motion approved.

Alderman Palazzolo returned to the podium.

Alderman Billingsley stated that at one of the board meetings, the naming of the parks was discussed and how the name “Central Park” was developed. The Board had received a memo from Mr. Lawton and he asked for a clarification.

Mr. Lawton stated that one year ago the Board of Mayor and Aldermen adopted the Park Master Plan for this area and passed a resolution naming itself. The Board meeting that Alderman Billingsley was referring to Mr. Whitehead and Mr. Pouncey discussed the Board’s action in terms of adopting the Park Master Plan. He stated what he did not remember at that time was that the actual resolution the Board adopted with the Master Plan included the name of Central Park. Mr. Lawton read resolution 08R06 which was adopted on June 9, 2008.

Alderman Billingsley asked Mr. Lawton to share the memo with the Parks & Recreation Commission.

Alderman Palazzolo stated he was assuming that staff had worked on the Master Plan in concert with many different stake-holders and the 2008 Parks and Recreation Commission and since they had approved the Plan, his question was did Parks and Recreation Commission approve the name Central Park as well.

Jerry Gee, the chairman of the Parks and Recreation Commission, stated to his knowledge, before Alderman Billingsley brought this up, he did not remember ever addressing the naming of the Park. He did not ever remember addressing it as an agenda item.

Alderman Palazzolo asked if with the adoption of the Park Master Plan by the Board in 2008 wasn’t the park name approved?

In response to a question by Alderman Hinely asking if the Board could revoke the resolution, Mr. Lawton stated that Mr. Cates had advised that it is a resolution and the Board could amend the resolution at any time.

Mr. Cates stated you did not have to wipe out the resolution, just change that part of it so that the Master Plan would still be approved.

Alderman Hinely stated she would like to amend the resolution. She stated she agreed with the Master Plan but thought the name of the park should be reconsidered. She stated that was a motion, Mr. Drinnon seconded the motion.

Mayor Goldsworthy stated a point of clarification regarding when an agenda had been adopted.

Mr. Cates stated the Board was not supposed to take action on any item brought before the Board during a Board meeting.

Alderman Hinely stated she withdrew her motion.

Mr. Cates stated it could serve notice to be put on the next agenda.

Alderman Chism stated he was the first one to bring up the question of who names parks. He stated the letter that was adopted in 1986 was appropriate to ask the Parks and Recreation Commission to make recommendations to the Board of Mayor and Aldermen and the full Board should make the final decision.

Mr. Lawton stated that at the next meeting, assuming the request of Alderman Hinely is on the agenda, he would have the appropriate policy letter that addresses the naming of the parks for the Board's purview.

Alderman Palazzolo asked for the minutes of the Parks and Recreation Department for April, May and June be included.

Alderman Billingsley stated the policy letter asks for input from the Parks and Recreation Commission as well as the administrative staff. He asked if that direction would be taken before it comes back to the Board.

Mr. Lawton stated that because administrative staff did not have clear direction from the Board on name change or otherwise, he thought the best step would be to change the resolution per Ms. Hinely's request as opposed to a name change at the next board meeting.

Alderman Palazzolo stated that would all be premature if minutes from Parks and Recreation had already discussed it and voted on it or there was some more clarity.

Mr. Lawton stated he understood the request from Alderman Hinely was to make blank the resolution in terms of any type of name and then reconsider, and at some point take for consideration the naming of that park.

Mayor Goldsworthy asked if it would be helpful if staff would research the minutes as requested, to report any discussion Parks and Recreation Commission may have had that referred to the Master Park Plan and any reference to the naming of the park. Having that information, then come back in two weeks so the Board could give direction, making the assumption that there was no adequate discussion, come back and give formal request to the Parks and Recreation Commission to weigh in on the naming of the park. Then pursuant to that, receiving recommendations with input from the Parks and Recreation Commission, the Board could go forth.

Alderman Chism stated that the Parks and Recreation policy clearly states that the Parks and Recreation Commission should make the recommendation to the Board and if this was what the Mayor was saying then that is what the Board should abide with.

Consent Agenda

Alderman Drinnon asked to pull both items from the consent agenda in order to discuss them.

Project Development Contract No. 1147 – Holiday Inn Express – Extension of Completion Date - Moved from Consent Agenda

Assistant City Administrator Andy Pouncey stated the developer had gotten behind schedule and had requested an additional three months from today's date to complete the project.

In response to a question from Alderman Drinnon, Mr. Pouncey stated the Department of Development had reviewed the request.

Motion by Ms. Hinely, seconded by Mr. Drinnon, to approve the First Amendment to Project Development Contract No. 1147 for Holiday Inn Express.

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–yes, Hinely–yes, Palazzolo–yes. Motion approved.

Subdivision Development Contract No. 494 – St. James Place - Moved from Consent Agenda

Director of Community Development Director Jerry Cook stated this development was almost complete but the developer was in bankruptcy and a new owner Community Bank, NA has taken over. There was a punch list to finish the subdivision and the new owner wishes to enter into a contract with the City and finish out the subdivision. The Department of Development recommended to approve the new development contract. All the provisions of the previous contract that were approved both by the Planning Commission, the Design Review Commission and the Board of Mayor and Aldermen are still included in the new contract.

Alderman Drinnon asked if there were any legal entanglements the City might get involved in.

Mr. Cates stated the original owner lost the development in foreclosure and the bank is taking it over. What the City did was write a new development contract and they must be responsible for everything that was required initially that had not yet been done. They had to get a new bond and new insurance requirements just as if they were the initial players.

Mr. Cook stated the back taxes on the property had been paid by the new owner.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve Subdivision Development Contract Number 494 for St. James Place.

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–yes, Hinely–yes, Palazzolo–yes. Motion approved.

Mayor Goldsworthy thanked the staff and volunteers for the very special Family Fourth Celebration.

Alderman Billingsley thanked staff and Alderman Chism for the direction the Germantown Athletic Club had taken. The front page of the Memphis Business Journal featured the Club and the direction the Club was taking. He stated that over 90 new memberships were obtained during their Open House.

Mr. Lawton stated there were over 200+ family memberships coming into the Club.

ADJOURNMENT

There being no further business to be brought before the Board, the meeting was adjourned.